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Co. (Me.), 95 Atl. 1029. For discussion of principles involved, see 2 *V. A. L. Rev.* 223.

RAILROADS—SPECIFIC PERFORMANCE—CONTRACTS TO MAINTAIN A DEPOT.—In consideration of a grant of a right of way and depot grounds, the defendant covenanted to erect and maintain thereon a depot for the accommodation of the general public. The depot was accordingly erected and operated for a short period, when it was discontinued. The plaintiff brought suit to compel specific performance of the covenant. *Held*, specific performance is decreed, so long as its enforcement is not inconsistent with the duties owed by the defendant to the general public or unduly burdensome to the defendant. *Harper v. Virginian Ry. Co.* (W. Va.), 86 S. E. 919.

Specific performance of contracts may not be invoked *ex debito justitiae*, but rests peculiarly within the sound discretion of the court. *Marble Company v. Ripley*, 10 Wall. 339; *Port Clinton R. R. Co. v. Cleveland & Toledo R. R. Co.*, 13 Ohio St. 544; *Ramsey v. Gheen*, 99 N. C. 215, 6 S. E. 75; *Conger v. New York, W. S. & B. Ry. Co.*, 120 N. Y. 29, 23 S. E. 983.

It is unanimously held that an agreement by a railroad company to locate a depot at a designated point, which also prohibits the location of others within prescribed limits is void *per se*, as violative of public policy. *Marsh v. Fairbury & Northwestern R. R. Co.*, 64 Ill. 414, 16 Am. Rep. 564; *Williamson v. Chicago, R. I. & P. R. R. Co.*, 53 Iowa 126, 4 N. W. 870, 36 Am. Rep. 206. Likewise, contracts in which an officer or other person supposed to be influential with the railroad company agrees, for a consideration promised, to secure the location of a depot or terminus at a particular place, are held to be void. *Fuller v. Dame*, 18 Pick. (Mass.) 472; *Enid Right of Way & Townsite Co. v. Lile*, 15 Okla. 317, 82 Pac. 810. A contract to deed to the railroad company property for purposes of speculation, in consideration of the location of a depot on the promisor's land, has also been held void as tending to work a sacrifice of the public welfare to subserve private interests. *Pacific R. R. Co. v. Seeley*, 45 Mo. 212, 100 Am. Dec. 369. But a contract by which a railroad company binds itself, in return for a grant of a right of way or other valuable consideration, to erect and operate a depot is not void, as being in contravention of public policy. *Louisville, N. A. & C. Ry. Co. v. Sumner*, 106 Ind. 55, 5 N. E. 404, 55 Am. Rep. 719; *Atlanta & W. P. R. R. Co. v. Camp*, 130 Ga. 1, 60 S. E. 177, 124 Am. St. Rep. 151. And specific performance will be decreed in such cases, unless other public interests have since intervened or the contract is otherwise illegal, although the performance of the contract require the doing of continuous acts, involving skill and judgment. *Murray v. Northwestern R. R. Co.*, 64 S. C. 520, 42 S. E. 617; *Taylor v. Florida East Coast Ry. Co.*, 54 Fla. 635, 45 South. 574, 127 Am. St. Rep. 155, 16 L. R. A. (N. S.) 307. See, also, *Atlanta & W. P. R. R. Co. v. Camp*, *supra*. But, if it appear that the interests of the public demand that the contract be not performed, or further performed, specific performance will be denied. *Texas & Pacific Ry. Co. v. Marshall*, 136 U. S. 393; *Conger v. New York, W. S. & B. Ry. Co.*, *supra*.

The principle upon which these cases rest is that, when one contracts with a railroad company with reference to matters wherein the general public is interested, the contract is made subject to the superior rights of the general public; and when the exigencies of the business of the company are such that the rights of the public conflict with those of the contracting party, it is presumed that it was the intention of the parties that the private rights should yield to the superior rights of the public. It is only where the railroad company can show that superior rights of the public have intervened that it may escape performance, when the contract is otherwise capable of being specifically enforced. See *Taylor v. Florida East Coast R. R. Co.*, *supra*; *Texas & Pacific R. R. Co. v. Marshall*, *supra*; *Conger v. New York, W. S. & B. Ry. Co.*, *supra*.

TAXATION—ILLEGAL APPROPRIATION—TAXPAYERS' RIGHT TO INJUNCTION.—A state legislature passed an act making appropriations for the salaries of various state officers. The plaintiff, as a private citizen and taxpayer, filed a bill to enjoin the state treasurer from paying out any of the state funds in pursuance of the act, alleging the act to be unconstitutional. *Held*, the injunction is granted. *Fergus v. Russel* (Ill.), 110 N. E. 130. See *NOTES*, p. 382.

TORTS—INTERFERENCE WITH BUSINESS OR OCCUPATION—JUSTIFICATION.—The defendant, by threats and other means not unlawful in themselves, prevented the plaintiff from obtaining boarders and caused others to cease dealing with her. The defendant's acts were prompted by spite and ill-will toward plaintiff and without any reasonable expectation of benefit to himself. As a result of these acts the plaintiff's business was ruined. *Held*, such intentional interference with the plaintiff's business without justifiable cause is an actionable wrong. *Hutton v. Watters* (Tenn.), 179 S. W. 134. See *NOTES*, p. 385.

WILLS—WITNESSING IN TESTATOR'S PRESENCE—BLIND TESTATOR.—The testator, who was blind, duly executed a will. After he had signed the will, the witnesses attested it by subscribing their names thereto, on a table about four feet from the bed where the testator lay. *Held*, the attestation was in the presence of the testator. *In re Allred's Will* (N. C.), 86 S. E. 1047.

Practically all of the state statutes require that a will, to be valid, must be attested by witnesses in the presence of the testator. Here, the word presence involves two ideas: mental cognition of the act of attestation and physical proximity to its accomplishment. See *PAGE, WILLS*, 229.

Primarily, the testator must be mentally cognizant of what is being done. *Heatherington v. Pipes*, 32 Miss. 451; *Orndorf v. Hummer*, 12 B. Mon. (Ky.) 619; *Healey v. Bartlett*, 73 N. H. 110, 59 Atl. 617, 6 Ann. Cas. 413. When the testator is mentally cognizant of the act, however, but does not take notice of it, and he is not prevented from taking notice by physical infirmities, the attestation is in his presence.